1999

Robert Bradley v. Payson City Corporation : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ROBERT BRADLEY; JOYCE BRADLEY; R. DALE WHITELOCK; KARMA WHITELOCK; LOUIS PETERSON; and BARBARA PETERSON, Plaintiffs / Appellees, v. PAYSON CITY CORPORATION, Defendant / Appellant.	)	Case No. 990329-CA

PR15

BRIEF OF APPELLEE

Appeal from Order of the Fourth District Court of Utah, Utah County, the Honorable Ray M. Harding, Sr., presiding.

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over the instant appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j).

STATEMENT OF ISSUES / STANDARDS OF REVIEW

1. Whether the district court erroneously granted summary judgment for Plaintiffs. The determination of whether a party is entitled to summary judgment is a conclusion of law, which is reviewed for correctness with no deference given to the district court. *Parker v. Dodgion*, 971 P.2d 496, 497 (Utah 1998); *Higgins v. Salt Lake County*, 855 P.2d 231, 235 (Utah 1993). Moreover, "[i]t is well-settled that an appellate court may affirm a trial court's ruling on any proper grounds, even though the trial court relied on some other ground." *DeBry v. Noble*, 889 P.2d 428, 444 (Utah 1995).

2. Whether the district court utilized the proper standard of review in the course of granting summary judgment. This is a legal issue that is reviewed for correctness. *See Springville Citizens for Better Community v. City of Springville*, 979 P.2d 332, 336 (Utah 1999). "It is well-settled that an appellate court may affirm a trial court's ruling on any proper grounds, even though the trial court relied on some other ground." *DeBry v. Noble*, 889 P.2d 428, 444 (Utah 1995).

3. Whether the total lack of evidence supporting the City Council's denial of Plaintiffs' R-2-75 rezone application was supported by substantial evidence. This is a legal issue that is reviewed for correctness. *See Springville Citizens for Better Community v. City of Springville*, 979 P.2d 332, 336 (Utah 1999). "It is well-settled that an appellate court may affirm a trial court's ruling on any proper grounds, even though the trial court relied on some other ground." *DeBry v. Noble*, 889 P.2d 428, 444 (Utah 1995).

4. If the court determines that the "reasonably debatable" standard of judicial review is applicable to the instant case, the issue is whether the total lack of evidence supporting the City Council's denial of Plaintiffs' R-2-75 rezone application is reasonable to the point that it is reasonably debatable. This is a legal issue that is reviewed for correctness. *See Springville Citizens for Better Community v. City of Springville*, 979 P.2d 332, 336 (Utah 1999). "It is well-settled that an appellate court may affirm a trial court's ruling on any proper grounds, even though the trial court relied on some other ground." *DeBry v. Noble*, 889 P.2d 428, 444 (Utah 1995).

DETERMINATIVE AUTHORITY

The constitutional provisions, statutes, ordinances, rules, and regulations, whose interpretation is determinative, are set out verbatim, with the appropriate citation, in the body and arguments of the instant brief.

STATEMENT OF THE CASE

This case involves an adverse land use decision by the Payson City Council concerning Plaintiffs' property (also referred to as "the Property"), which is governed by The Municipal Land Use Development and Management Act set forth in Utah Code Ann. § 10-9-101, *et seq.* The Payson City Council's decision was an arbitrary and capricious denial of Plaintiffs' application to rezone their property from R-1-A to R-2-75. Plaintiffs sought to have their property rezoned from the R-1-A residential designation to the R-2-75 higher density multi-family zoning designation.

Plaintiffs initiated this action, claiming the City Council's denials of their rezone requests were arbitrary and capricious, and that the denials constituted a taking without just compensation. Thereafter, Payson City Corporation filed a motion for summary judgment, demanding that the district court dismiss the complaint because the Payson City Council had acted within its legislative prerogative. Plaintiffs responded and filed a motion for summary

judgment, arguing that the City Council's decisions were arbitrary and capricious.

At the initially scheduled hearing for oral arguments on the motions for summary judgment, the district court expressed concern about the lack of basis to deny the rezone requests in the minutes of the public hearings on the rezone applications. Consequently, the district court directed Payson City Corporation to prepare findings setting forth the basis of the City Council's decisions. Shortly thereafter, the City submitted Findings of the City Council Decision, setting forth the reasons why the City Council denied Plaintiffs' rezone applications.

After hearing oral arguments on the cross-motions for summary judgment, the district court took the matter under advisement. By way of Memorandum Decision, the district court granted Plaintiffs' Motion for Summary Judgment and denied Payson City Corporation's Motion for Summary Judgment. Shortly thereafter, the district court signed its final Order concerning the foregoing. Payson City Corporation subsequently filed this appeal.

STATEMENT OF FACTS

Plaintiffs provide the following Statement of Facts to the extent that the Statement of Facts in Payson City Corporation's Brief fails to accurately or adequately state the applicable facts:

1. At the time Plaintiff's applied for a rezone, the subject property was located within an area zoned as R-1-A, which is a residential zone with some large animal rights (R. 79, Payson City Corporation's Memorandum in Support of Motion for Summary Judgment, ¶1; R. 70-71, Affidavit of Andy Hall in Support of Payson City Corporation's Motion for Summary Judgment, ¶2);

2. Plaintiffs' property is surrounded by property designated as R-1-A for residential use (R. 42, Payson Planning Zone Map).[1] Not more than two and one-half blocks east of the Property, however, is a large, expansive piece of property that is designated as R-2-75, which is the same zoning designation that was requested by Plaintiffs (*See id.*);

3. The 1995 Payson City General Plan states that residential areas should be encouraged to locate east of the I-15 buffer, and that zoning ordinances that utilize I-15 as a buffer should be enacted (*See* R. 50 and 52, Payson City General Plan 1995).[2] In direct contrast, the Official Payson City General Plan Map, which

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[1]The Payson Planning Zone Map in the record on appeal reveals that this R-2-75 property abutting the subject property is located on both the west and east sides of I-15 (R. 42, Payson Planning Zone Map).

[2]The Payson City General Plan also establishes the policy of providing for a "mixture of residential densities" by zoning "locations for low, medium, and high density housing." (*See* R. 51, Payson City General Plan 1995).

was adopted July 5, 1995, provides for large areas of residential use west of I-15 (*See* R. 43, Official General Plan Map);

4. In January 1996, Plaintiffs submitted their application to rezone their property from R-1-A to R-2-75, which is a residential zoning designation that permits multiple family dwellings (*See* R. 177-78, Zoning Change Application; Affidavit of Andy Hall in Support of Payson City Corporation's Motion for Summary Judgment, ¶3);

5. On February 8, 1996, Plaintiffs' R-2-75 rezone application came before the Planning Commission (*See* R. 166-67, Payson Planning Commission Meeting Minutes, February 8, 1996). During the meeting, the Commission engaged in general discussion about the rezone request and the character of the property, which included an acknowledgment by Chairman Stewart that because "there are already other residential developments in the surrounding area where this rezone would take place, there may not be a problem in rezoning this to R-2-7500." (*See id.*). The Planning Commission then voted to recommend to the Payson City Council that a public hearing be held on the rezone to R-2-75 (*Id.*);

6. By way of a Planning Commission Staff Report, dated March 20, 1996, the Staff recommended that the Planning Commission recommend approval to the Payson City Council of Plaintiffs' R-2-75 rezone application (*See* R. 173, Planning Commission Staff Report);

7. A public hearing on Plaintiff's rezone application was held before the Planning Commission on March 20, 1996 (*See* R. 153-55, Payson City Planning Commission Meeting Minutes, March 20, 1996). At the public hearing, a petition signed by thirty-eight people was submitted to the Commission by a neighborhood group that opposed the zoning change to R-2-75 (*See id.* at R. 155; R. 159-60, Petition). In addition to the Petition, thirteen individuals expressed their opposition to the R-2-75 rezone (*See* R. 154-55, Payson City Planning Commission Meeting Minutes, March 20, 1996).[3] After the public comments, the Planning Commission recommended that the Payson City Council deny the R-2-75 rezone (*See id.* at R. 153);

8. A few minutes after the Planning Commission adjourned, the Payson City Council held a public hearing on the R-2-75 rezone application (*See* R. 231-33, Payson City Council Meeting Minutes, March 20, 1996). During the hearing, the Planning and Zoning Chairperson informed the City Council that the Planning Commission had just met "and after considering the public input, voted to deny the zone change." (*See id.* at R. 231). As with the public hearing before the Planning Commission, the thirty-eight signature Petition was submitted to the City Council by the neighborhood group that opposed the zoning change to R-2-75 (*See id.* at R. 232). Subject

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[3]Only five individuals spoke in favor of the R-2-75 rezone, four of which had an interest in the requested rezone (*See* R. 154-55, Payson City Planning Commission Meeting Minutes, March 20, 1996).

to one or two exceptions, the same individuals appeared before the City Council as did before the Planning Commission (*See id.* at 232-33). One exception was Mr. Jim Wilbert, an expert with twenty years of planning experience, who spoke in favor of the rezone because it "allows for affordable housing near the industrial park." (*See id.* at 232). The City Council voted to deny the R-2-75 rezone "based on the General Plan recommendation, traffic concerns relating to the industrial park, and [the Planning Commission's] recommendation." (*See id.* at R. 231);

9. An Interoffice Memo from the Planning Commission to the City Council, dated May 10, 1996, explaining the reasons for recommending denial of the R-2-75 rezone application states, "The Planning Commission recommendation to the City Council was to not approve the [R-2-75] zone change *because of the opposition of the neighbors in that area.*" (*See* R. 110-11, Interoffice Memo);

10. Plaintiffs submitted a second Zoning Change Application, requesting that their property be rezoned from R-1-A to R-1-9 (*See* R. 145, Zoning Change Application; R. 334, Findings of City Council Decision, ¶3). Both the Planning Commission Staff and the Planning Commission recommended approval of the R-1-9 rezone (*See* R. 140, Planning Commission Staff Report, dated April 11, 1996; R. R. 122-23, Payson City Planning Commission Meeting Minutes, dated April 11, 1996). After a public hearing during a City Council meeting,

the City Council voted to deny the R-1-9 rezone request (*See* R. 222-23, Payson City Council Meeting Minutes, dated May 22, 1996);

11. Plaintiffs appealed the Payson City Council's denials of their rezone requests by filing a Verified Complaint in Fourth District Court, alleging the Payson City Council's denials of their rezone requests were arbitrary and capricious, and that the denials constituted a taking without just compensation. (*See* R. 2-16, Verified Complaint);

12. Payson City Corporation filed a motion for summary judgment, demanding that the district court dismiss the complaint because the Payson City Council had acted within its legislative prerogative (*See* R. 33-79, Payson City Corporation's Motion for Summary Judgment and supporting Memorandum). Plaintiffs responded and filed a motion for summary judgment, arguing that the City Council's decisions were arbitrary and capricious (*See* R. 86-191, Plaintiffs' Motion for Summary Judgment and Response in Opposition to Defendant's Motion for Summary Judgment and supporting Memorandum of Points and Authorities);

13. At the initially scheduled hearing for oral arguments on the motions for summary judgment (*see* R. 281, Notice of Oral Arguments), the district court expressed concern about the lack of basis to deny the rezone in the minutes of the public hearings on the rezone applications (*See* R. 445, Transcript of Hearing Held

September 8, 1998, p. 3, lines 1-11, p. 4-5). Consequently, the district court directed Payson City Corporation to prepare findings setting forth the basis of the City Council's decisions to deny the rezone (*See* R. 282, Minutes Oral Arguments; R. 284-85, Order). Shortly thereafter, the City submitted Findings of the City Council Decision, setting forth the reasons why the City Council denied Plaintiffs' rezone applications (*See* R. 285-334, Findings of City Council Decision [sic]). The Findings were substantially the same, if no identical, in terms of providing the basis for the City Council's denials of the rezone requests;

14. After hearing the parties' oral arguments on the cross-motions for summary judgment, the district court took the matter under advisement (*See* R. 446, Transcript of Hearing Held January 15, 1999, p. 32, lines 22-25);

15. By way of Memorandum Decision, the district court granted Plaintiffs' Motion for Summary Judgment and denied Payson City Corporation's Motion for Summary Judgment (*See* R. 341-43, Memorandum Decision, a true and correct copy of which is attached hereto as Addendum A). The district court determined that the Payson City Council's denial of Plaintiffs' R-2-75 rezone request was arbitrary and capricious (*See id.* at R. 342). Because the City Council's denial of Plaintiffs' R-2-75 rezone request was arbitrary and capricious, the district court stated that it need not address

or "analyze the denial of the [Plaintiffs'] second [rezone] application (*See id.* at R. 341). Shortly thereafter, the district court signed its final Order (*See* R. 344-45, Order);

16. Payson City Corporation subsequently filed Notice of Appeal (*See* R. 349-51, Notice of Appeal).

SUMMARY OF ARGUMENTS

1. The correct standard for judicial review of land use decisions, such as that in the instant case, is enunciated in Utah Code Ann. § 10-9-1001(3)(b) and is set forth by the recent Utah Supreme Court decision in *Springville Citizens for a Better Community v. City of Springville*. The plain language of Utah Code Ann. § 10-9-1001, in conjunction with the Utah Supreme Court's definitive interpretation of that statute in *Springville Citizens*, now supersedes any prior law, case law or otherwise, that recognizes a difference in the standards of review concerning city council administrative vis-a-vis legislative actions.

2. In the course of granting summary judgment, the district court utilized the correct standard for judicial review of land use decisions, which is enunciated in Utah Code Ann. § 10-9-1001(3)(b), and which is set forth in the recent Utah Supreme Court decision in *Springville Citizens for a Better Community v. City of Springville*.

3. The district court applied the correct standard of judicial review set forth in Utah Code Ann. § 10-9-1001 and as enunciated by the Utah Supreme Court in *Springville Citizens*.

4. The Payson City Council's denial of the R-2-75 rezone request was arbitrary and capricious because it was not supported by substantial evidence, which is required by Utah Code Ann. § 10-9-1001 and the *Springville Citizens* case.

5. Assuming, *arguendo*, that the "reasonably debatable" standard of judicial review applies to the City Council's decision, the undisputed facts demonstrate that the city council's denial of plaintiffs' R-2-75 rezone application was arbitrary and capricious. In the instant case, the record indisputably reveals that the City Council relied merely on public comment in the course of denying Plaintiffs' R-2-75 rezone application. Moreover, the reasons provided by the City Council for its denial were in direct contradiction to the actual facts and circumstances surrounding the proposed rezone. Hence, the reasonableness of the City Council's decision is not even "fairly debatable."

ARGUMENTS

I. INTRODUCTION

"Summary judgment is appropriate only when there are no genuine issues of fact and the moving party is entitled to judgment

as a matter of law." *Springville Citizens For a Better Community v. City of Springville*, 979 P.2d 332, 336 (1999); *see also* Utah R. Civ. P. 56(c);[4] *accord Parker v. Dodgion*, 971 P.2d 496, 496-97 (Utah 1998) (quoting *Higgins v. Salt Lake County*, 855 P.2d 231, 235 (Utah 1993)). "In reviewing a grant of summary judgment, we do not defer to the legal conclusions of the district court, but review them for correctness." *Springville Citizens*, 979 P.2d at 336; *Parker*, 971 P.2d at 497; *Higgins*, 855 P.2d at 235. "When reviewing a municipality's land use decision, our review is limited to determining 'whether . . . the decision is arbitrary, capricious, or illegal." *Id.* (citing Utah Code Ann. § 10-9-1001(3)(b) (1996)).

II. THE CORRECT STANDARD FOR JUDICIAL REVIEW OF LAND USE DECISIONS, WHICH IS ENUNCIATED IN UTAH CODE ANN. § 10-9-1001(3)(b), IS SET FORTH BY THE RECENT UTAH SUPREME COURT DECISION IN *Springville Citizens for a Better Community v. City of Springville*.

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[4]Rule 56(c) provides in relevant part:

> The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Although, as advanced in recent Utah case law,[5] there existed extensive case law in 1991 stating different standards of judicial review for administrative and legislative land use decisions, the Utah Legislature enacted a "one-size-fits-all standard of review" for "municipality[] land use decisions"[6] when it passed what is now known as Utah Code Ann. § 10-9-1001. *See* Utah Code Ann. § 10-9-1001(3)(b) (1999); *Harmon City, Inc. v. Draper City*, 388 Utah Adv. Rep. 24, 30 (Utah Ct. App. February 10, 2000) (dissenting, J. Jackson). According to Utah Code Ann. § 10-9-1001(3), "The courts shall: (a) presume that land use decisions and regulations are valid; and (b) determine only whether or not the decision is arbitrary, capricious, or illegal."

In *Springville Citizens*, the Utah Supreme Court took the broad and plain language of Utah Code Ann. § 10-9-1001 at face value, as it should, questioning not whether the Utah Legislature intended that two different standards of judicial review result from the

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[5]*See Harmon City, Inc. v. Draper City*, 388 Utah Adv. Rep. 24, 25 n.5 (Utah Ct. App. February 10, 2000) (comparing *Marshall v. Salt Lake City*, 105 Utah 111, 141 P.2d 704, 705-06 (1943) with *Xanthos v. Board of Adjustment of Salt Lake City*, 685 P.2d 1032, 1035 (Utah 1984)).

[6]Utah Code Ann. § 10-9-1001(1), which governs appeals and enforcement of municipal land use decisions, states, "No person may challenge in district court *a municipality's land use decisions made under this chapter or under the regulation made under authority of this chapter* until that person has exhausted his administrative remedies." (Emphasis added).

single and simple standard set forth in that statute. *Id.*[7] Moreover, the Utah Supreme Court, in *Springville Citizens*, refused to distinguish between the administrative and legislative functions. Rather, the supreme court, without reservation, accepted the Legislature's plain language and thereby made the "sweeping statement" that "a municipality's land use decision is arbitrary and capricious if it is not supported by substantial evidence." *Springville Citizens*, 979 P.2d 332, 336 (Utah 1999); *Harmon City*, 388 Utah Adv. Rep. at 30.

Notwithstanding the views of this Court or the views of Payson City Corporation concerning the appropriate standard of judicial review for reviewing the City Council's denial of Plaintiffs' R-2-75 rezone application in the instant case, the only recourse for this Court, according to principles of stare decisis, is to follow the supreme court's clear command in *Springville Citizens*. *See*

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[7]The Utah Supreme Court's reading of the standard of judicial review set forth in Utah Code Ann. § 10-9-1001 is consistent with well-established standard rules of statutory construction. *See Wilson v. Valley Mental Health*, 969 P.2d 416, 418 (Utah 1998) (appellate court looks first to plain language "as the best indicator of the legislature's intent and purpose in passing the statute"); *Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick*, 890 P.2d 1017, 1019 (Utah 1995) (statute should generally be construed according to its plain language); *Brinkerhoff v. Forsyth*, 779 P.2d 685, 686 (Utah 1989) (same); *Savage Indus., Inc. v. Utah State Tax Comm'n*, 811 P.2d 664, 670 (Utah 1991) (statutory words are to be read literally unless such a reading is unreasonably confused or inoperable); *Murphy v. Crosland*, 886 P.2d 74, 80 (Utah Ct. App. 1994) (same).

Harmon City, 388 Utah Adv. Rep. at 30 (discussing "direct precedential effect" of *Springville Citizens* case). Consequently, the plain language of Utah Code Ann. § 10-9-1001, in conjunction with the Utah Supreme Court's definitive interpretation of that statute in *Springville Citizens*, now supersedes any prior law, case law or otherwise, that recognizes a difference in the standards of review concerning city council administrative vis-a-vis legislative actions. *Id.*

III. THE DISTRICT COURT APPLIED THE CORRECT STANDARD OF JUDICIAL REVIEW SET FORTH IN UTAH CODE ANN. § 10-9-1001 AND AS ENUNCIATED BY THE UTAH SUPREME COURT IN *Springville Citizens*.

"A municipality's land use decision is arbitrary and capricious if it is not supported by substantial evidence." *Springville Citizens for a Better Community v. City of Springville*, 979 P.2d 332, 336 (Utah 1999) (citing *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 604 (Utah Ct. App. 1995). "In evaluating the City's decision under this standard, [the appellate court] review[s] the evidence in the record to ensure that the City proceeded within the limits of fairness and acted in good faith." *Id.* "[The appellate court] also determine[s] whether, in light of the evidence before the City, a reasonable mind could reach the same conclusion as the City." *Id.* (also citing 2 Young, *Anderson's American Law of Zoning*, § 11.11, at 461 (4th ed. 1996))

(Parenthetical statement omitted). "[The appellate court] do[es] not, however, weigh the evidence anew or substitute [its] judgment for that of the municipality." *Id.* (citing *Patterson*, 893 P.2d at 604 and *Xanthos v. Board of Adjustment*, 685 P.2d 1032, 1035 (Utah 1984)).

Payson City Corporation argues in its Brief that the district court incorrectly "viewed himself as conducting a plenary review which would allow him to make an independent decision based on the facts set forth in the legislative record." *See* Brief of Appellant, p. 17 (citing R. 446, Transcript of Hearing Held January 15, 1999, p. 3). A review of the discussion set forth in the cited transcript in the context of the complete record reveals that Payson City Corporation's argument is without merit. Initially, Payson City Corporation's "plenary review" argument is troubling because at the time the district court's comments were made, Payson City Corporation's legal counsel made absolutely no effort to object to or correct the unintentional misperception by the trial court concerning plenary review. Consequently, principles of waiver and invited error apply, precluding Payson City Corporation from now complaining of the alleged error. *See State v. Anderson*, 929 P.2d 1107, 1109 (Utah 1996) ("a party cannot take advantage of an error committed at trial when that party led the trial court into committing the error"); *see also State v. Kiriluk*, 975 P.2d

469, 475 (Utah Ct. App. 1999) (hold that manifest injustice exception has no application in cases where the party invited the very error complained of on appeal). Nevertheless, the district court's comments concerning plenary review were harmless for two reasons. First, they were made prior to oral arguments and, therefore, prior to any legal analysis by the district court of the legal arguments contained in the motions for summary judgment. Second, the district court corrected any misperception it may have had concerning the application of plenary review after taking the motions under advisement and thereafter issuing its well-reasoned Memorandum Decision (*See* R. 341-43, Memorandum Decision, a true and correct copy of which is attached hereto as Addendum A). The Memorandum Decision reveals that the district court did not weigh anew the underlying factual considerations of the City Council's denial. *See, e.g., Xanthos*, 685 P.2d at 1035. Moreover, the Memorandum Decision provides no proof of and in fact contradicts any notion that the district court went beyond its role and decided the case according to its own notion of what would be in the best interests of the citizens of Payson City. *Id.* To the contrary, the district court merely determined, based on the almost complete lack of evidence in the record before it, that the reasons given by the City Council for denying the R-2-75 rezone application "are

without sufficient factual basis." (*See* R. 342, Memorandum Decision).

Payson City Corporation also argues that the district court failed to grant the City Council's decision the requisite presumption of validity or judicial deference. *See* Brief of Appellant, p. 17. Again, a review of the complete record on appeal in conjunction with the district court's Memorandum Decision indicates otherwise.

During a hearing intended for oral arguments on the pending motions for summary judgment, which was well before the issuance of its Memorandum Decision, the district court expressed concern about the lack of basis to deny the rezone in the minutes of the public hearings on the rezone applications (*See* R. 445, Transcript of Hearing Held September 8, 1998, p. 3, lines 1-11, p. 4-5). Consequently, the district court directed Payson City Corporation to prepare findings setting forth the basis of the City Council's denials of the rezone applications (*See* R. 282, Minutes Oral Arguments; R. 284-85, Order). The district court's effort to allow the City Council another opportunity to provide a basis for its denials of Plaintiffs' rezone applications, which it clearly was not required to do, is consistent with the requisite presumption of validity vis-a-vis the statutory duty the court has to determine

whether the land use decision is "supported by substantial evidence." *Springville Citizens*, 979 P.2d at 336-37.

The Memorandum Decision also demonstrates the presumption of validity given by the district court of the City Council's decision and, at the same time, diligently reviewing the decision for the requisite quantum of evidence, which it is also required to do. *See* Utah Code Ann. § 10-9-1001; *accord Springville Citizens*, 979 P.2d 336-37. The district court, in its Memorandum Decision, stated, "The stated reasons [by the City Council for denial of the R-2-75 rezone request] might normally be legally sufficient. However, they are without sufficient factual basis." (*See* R. 342, Memorandum Decision).

The standard of judicial review utilized by the district court in the instant case is consistent with the standard set forth in both Utah Code Ann. § 10-9-1001 and *Springville Citizens*. In its Memorandum Decision, the district court stated:

> The Court may reverse the City Council's denial of the zone change if the "action taken was so unreasonable as to be arbitrary and capricious." Xanthos v. Board of Adjustment, 685 P.2d 1032, 1034 (Utah 1984). "Even if the reasons given in the motion adopted by the council might otherwise be legally sufficient, . . . the denial of a permit is arbitrary when the reasons are sufficient factual basis. . . . Citizen opposition is a consideration which must be weighted, but cannot be the sole basis for the decision to deny." Davis County v. Clearfield City, 756 P.2d 704, 711 (Utah Ct.

> App. 1988). The Court believes that the standard set forth in Davis County, although that case involved a denial of an application for a conditional use permit instead of a zone change, involves the same legal analysis as this case.

This standard is essentially the same standard pronounced by the Utah Supreme Court in *Springville Citizens*, 979 P.2d at 336-37.[8]

IV. THE PAYSON CITY COUNCIL'S DENIAL OF THE R-2-75 REZONE REQUEST WAS ARBITRARY AND CAPRICIOUS BECAUSE IT WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

In the case at bar, the undisputed facts demonstrate that the City Council's decision was arbitrary and capricious because it was not supported by substantial evidence.[9] Moreover, the record demonstrates that the City Council's decision was anything but the result of careful consideration. Instead of carefully considering the rezone application, the City Council arbitrarily and capriciously stated reasons for denying Plaintiffs' rezone request

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[8]Payson City Corporation's own argument supports and is therefore consistent with Plaintiffs' argument that the district court utilized the correct standard of judicial review in the course of issuing its Memorandum Decision. *See* Brief of Appellant, Argument II, pp. 17-19.

[9]Substantial evidence is defined as "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." *See Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 604 n.6 (Utah Ct. App. 1995) (citing *First Nat'l Bank of Boston v. County Bd. of Equalization of Salt Lake County*, 799 P.2d 1163, 1165 (Utah 1990)). "It is more than a mere 'scintilla' of evidence . . . though 'something less than the weight of the evidence.'" *Grace Drilling Co. v. Board of Review*, 776 P.2d 63, 68 (Utah Ct. App. 1989) (quoting *Idaho State Ins. Fund v. Hunnicutt*, 715 P.2d 927, 930 (1985)).

that have no evidentiary support in the record and which are in direct contradiction to the facts and circumstances surrounding the rezone request.

Immediately following the public hearing on the R-2-75 rezone request, the City Council voted to deny the R-2-75 rezone "based on the General Plan recommendation, traffic concerns relating to the industrial park, and [the Planning Commission's] recommendation." (*See id.* at R. 231). In light of the evidence in the record, or essentially the total lack thereof, a reasonable mind could not reach the same conclusion as that of the City Council in the instant case.

The City Council displayed a total lack of consistency and due consideration when it denied the R-2-75 rezone request "based on the General Plan recommendation" (*Id.*). In direct contradiction to the Payson City General Plan (*see* R. 50 and 52), the Official Payson City General Plan Map, which was adopted within months of City Council's denial, expressly provides for large areas of residential use west of I-15 (*See* R. 43, Official General Plan Map). The subject R-2-75 application permits residential and density usage totally compatible with three of the four abutting properties or communities and an overall density that is consistent with the large and expansive multi-family neighborhood areas

directly to the east of the Property (*See* R. 42, Payson Planning Zone Map).

By citing "traffic concerns relating to the industrial park" as a reason to deny the R-2-75 rezone application, the City Council ignored the fact that the record is completely devoid of any evidence before it, credible or otherwise, that the requested R-2-75 zone would adversely impact traffic (*See* R. 342, Memorandum Decision, ¶3). The sole contrary evidence in the record were unsupported assertions by citizens with no known experience or training in the traffic engineering or planning fields (*See* R. 231-33, Payson City Council Meeting Minutes, March 20, 1996). This is hardly the evidence upon which a reasonable mind would reasonably rely for purposes of denying a rezone application, *see Springville Citizens For a Better Community v. City of Springville*, 979 P.2d 332, 336-37 (Utah 1999), particularly when viewed in light of the fact that the Planning Commission Staff had previously recommended that the Planning Commission recommend approval of the rezone application (*See* R. 173, Planning Commission Staff Report). *Cf. Davis County v. Clearfield*, 756 P.2d 704, 712 (Utah Ct. App. 1988) (stating, in conditional use permit case *using arbitrary and capricious - substantial evidence standard of review*, that "'[c]itizen opposition is a consideration which must be weighed, but cannot be the sole basis for the decision to deny'" and local

government entity "'must rely on facts, and not mere emotion or local opinion'" (citations omitted)). Contrastingly, Mr. Jim Wilbert, an expert with twenty years of planning experience, studied the proposed rezone and then appeared before the City Council, speaking in favor of the rezone because it "allows for affordable housing near the industrial park." (*See id.* at 232).

Finally, the City Council mistakenly relied upon "[the Planning Commission's] recommendation as a reason to deny the R-2-75 rezone application inasmuch as the basis upon which the Planning Commission's recommendation was based was equally, if not more so, factually deficient than that of the City Council's. After studying Plaintiff's R-2-75 rezone application, the Planning Commission's own staff, by way of a Staff Report, dated March 20, 1996, recommended that the Planning Commission recommend approval to the Payson City Council of Plaintiffs' R-2-75 rezone application (*See* R. 173, Planning Commission Staff Report). Moreover, during a Planning Commission Meeting On February 8, 1996, when Plaintiffs' R-2-75 rezone application came before the Commission (*See* R. 166-67, Payson Planning Commission Meeting Minutes, February 8, 1996), Chairman Stewart readily acknowledged that because "there are already other residential developments in the surrounding area where this rezone would take place, there may not be a problem in rezoning this to R-2-7500." (*See id.*). Poised to recommend

approval, the Planning Commission instead recommended that the Payson City Council deny the R-2-75 rezone after hearing the public comments (*See* R. 153-55, Payson City Planning Commission Meeting Minutes, March 20, 1996). The explanation for the Planning Commission's recommendation became apparent through an Interoffice Memo from the Planning Commission to the City Council, which states, "The Planning Commission recommendation to the City Council was to not approve the [R-2-75] zone change because of the opposition of the neighbors in that area." (*See* R. 111, Interoffice Memo). Consequently, it is readily apparent that any reliance by the City Council on the Planning Commission's recommendation was factually unfounded and fallacious.

V. ASSUMING, *ARGUENDO*, THAT THE "REASONABLY DEBATABLE" STANDARD OF JUDICIAL REVIEW APPLIES TO THE CITY COUNCIL'S DECISION, THE UNDISPUTED FACTS DEMONSTRATE THAT THE CITY COUNCIL'S DENIAL OF PLAINTIFFS' R-2-75 REZONE APPLICATION WAS ARBITRARY AND CAPRICIOUS.

Even under the "reasonably debatable" standard of judicial review set forth in *Smith Inv. Co. v. Sandy City*, 958 P.2d 245, 252 (Utah Ct. App. 1998), the City Council's denial of Plaintiffs' R-2-75 rezone application was arbitrary and capricious.[10] In the *Smith*

[10]Plaintiffs are cognizant of the statement set forth in the majority opinion in *Harmon City, Inc. v. Draper City*, 388 Utah Adv. Rep. 24 (Utah Ct. App. February 10, 2000), where the court stated, "Indeed, we have found no Utah case, nor a case from any other jurisdiction, in which a zoning classification was reversed on

Inv. case, the court of appeals stated, "[I]f an ordinance 'could promote the general welfare; or even if it is reasonably debatable that it is in the interest of the general welfare' we will uphold it." *Id.* (quoting *Marshall v. Salt Lake City*, 105 Utah 111, 121, 141 P.2d 704, 709 (1943)) (also citing *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 118 (1926)); *see also* 3 Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning & Planning* § 27A.03, at 27A-15 (1997) (phrasing inquiry as whether "the reasonableness of the action is 'fairly debatable'").

As specifically demonstrated above in Argument IV of the instant Brief, the undisputed facts of this case demonstrate that the City Council's decision was arbitrary and capricious because it was not supported by evidence that makes the reasonableness of the denial of the R-2-75 rezone application reasonably or fairly debatable. Based the dearth of evidence before the City Council as demonstrated by the record, there was nothing to support the reasonableness of the denial of the R-2-75 rezone application. While the record perhaps demonstrates that the reasonableness of

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grounds that it was arbitrary and capricious." *Id.* at 26. *But see Kanfer v. Montgomery County Council*, 373 A.2d 5 (Md. Ct. Spec. App. 1977) (reversing trial court's affirmance of denial of rezoning classification application under "fairly debatable" rule as arbitrary and capricious); and *Hall v. Korth*, 244 So.2d 766 (Fla. Dist. Ct. App. 1977) (affirming trial court's reversal of county commission's denial for rezone under "fairly debatable" rule as capricious and without reasonable basis in the record).

the City Council's decision is debatable, the total lack of evidence precludes the City Council's decision from being *reasonably* debatable. In fact, not only were the reasons given by the City Council for denying Plaintiffs' rezone request totally lacking in evidentiary support, there were in many ways, as previously discussed in detail, in direct contradiction to the record facts and circumstances surrounding the rezone request.

Payson City Corporation argues at length in its Brief that the "public clamor" doctrine is inapplicable to the instant case because the City Council was acting in its legislative capacity. *See* Brief of Appellant, pp. 20-22; *see also Harmon City, Inc. v. Draper City*, 388 Utah Adv. Rep. 24, 27-28 (Utah Ct. App. February 10, 2000) (holding "public clamor" doctrine inapplicable when legislative body acts in legislative capacity).[11] By so arguing, Payson City Corporation misperceives the underlying basis for the district court's determination that City Council's decision was arbitrary and capricious. That being that there was an absence of factual basis and evidentiary support for the decision to deny the R-2-75 rezone application (*See* R. 341-43, Memorandum Decision ("There being no sufficient factual basis for the decision to deny

[11]Payson City Corporation's position concerning "public clamor" is indeed dubious inasmuch as it fails to cite any authority that expressly states that "public clamor" is applicable only in the limited circumstances involving an administrative decision.

Plaintiffs' application, the Court finds that the decision was based solely on citizen opposition and was therefore arbitrary and capricious.").

Plaintiffs' acknowledge that the City Council appropriately held a public hearing and allowed interested parties to provide their ideas and opinions on the proposed rezone. However, the consideration of public input is only part of the information to be considered by the City Council prior to approving or denying a rezone application. In *Gayland v. Salt Lake County*, 11 Utah 2d 307, 358 P.2d 633 (1961), which was a zoning case, the Utah Supreme Court stated:

> [I]t is entirely appropriate to hold public hearings and to allow any interested parties it desires to give information and to present their ideas on the matter. But this is by no means the only source from which the commissioners may obtain such information. From the fact that they hold public offices it is to be assumed that they have wide knowledge of the various conditions and activities in the county bearing on the question of proper zoning, such as the location of businesses, schools, roads and traffic conditions, growth in population and housing, the capacity of utilities, the existing classification of surrounding property, and the effect that the proposed reclassification may have on these things and upon the general orderly development of the county. In performing their *duty* it is both their *privilege and obligation to take into consideration their own knowledge of such matters and also to gather available pertinent information from all possible sources and give consideration to it in making their determination.*

Id. at 636 (Emphasis added).

In the instant case, the record indisputably reveals that the City Council relied merely on public comment in the course of denying Plaintiffs' R-2-75 rezone application. Moreover, the reasons provided by the City Council for its denial were in direct contradiction to the actual facts and circumstances surrounding the proposed rezone. Hence, the reasonableness of the City Council's decision is not even "fairly debatable."

CONCLUSION

Based on the foregoing, Plaintiffs respectfully ask that this Court affirm the district court's summary judgment in favor of Plaintiffs and for any other relief the Court deems just or appropriate under the circumstances.

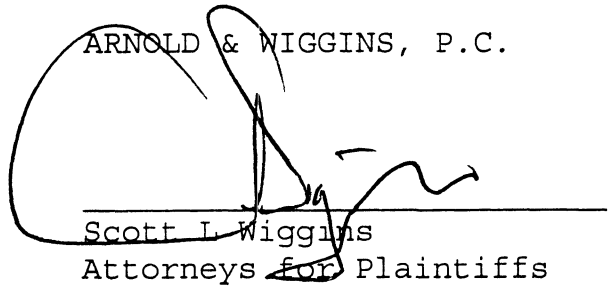
STATEMENT REGARDING METHOD OF DISPOSITION

Plaintiffs' counsel requests that the method of disposition of the instant appeal be by opinion designated "For Official Publication" for purposes of precedential value in future cases due to the significant issues in the instant appeal dealing with, among other things, the standard of judicial review to be utilized for reviewing municipal land use decisions pursuant to Utah Code Ann. § 10-9-1001. The aforementioned issues concern novel matters that are of continuing public interest and which, based on the facts of

the instant appeal, involve issues requiring further development in the municipal land use decisions, which would benefit both the bar and public, respectively.

RESPECTFULLY SUBMITTED this 26th day of April, 2000.

ARNOLD & WIGGINS, P.C.

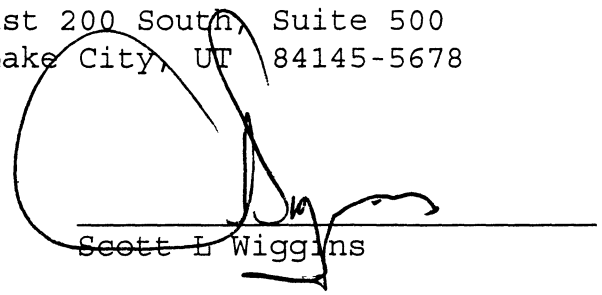


Scott L. Wiggins
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, SCOTT L WIGGINS, hereby certify that I personally caused to be mailed by First Class Mail, postage prepaid, two (2) true and correct copies of the foregoing **BRIEF OF APPELLANT** to the following on this 26th day of April, 2000:

Mr. Jody K Burnett
Williams & Hunt
257 East 200 South, Suite 500
Salt Lake City, UT 84145-5678



Scott L Wiggins

ADDENDUM

Addendum A: Memorandum Decision

Tab A

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

ROBERT BRADLEY, ET AL., Plaintiffs, vs. PAYSON CITY CORPORATION, Defendant.	**MEMORANDUM DECISION** CASE NO. 970400264 DATE: January 21, 1999 JUDGE: RAY M. HARDING DEPUTY CLERK: Georgia Snyder LAW CLERK: Dave Backman

This matter came before the Court upon Plaintiffs' and Defendant's cross Motions for Summary Judgment. Having received and considered the Motions, together with memoranda in support of and opposition to the Motions, the Court hereby grants Plaintiffs' Motion, denies Defendant's Motion, and delivers the following Memorandum Decision.

Statement of Facts

Plaintiffs applied to Payson City to change the zone of their property from R-1-A to R-2-75. Upon initial review of the application, the Planning Commission Staff issued an interoffice memo to the Mayor and the City Council members recommending approval of the zone change and for the Planning Commission and the City Council to hold a joint public hearing on the matter. On March 20, 1996, a joint public hearing was held and several landowners in the area expressed their opinions concerning the proposed change. After the public hearing, the Planning Commission voted to recommend denial of the zone change based on the opinions expressed at the public hearing. The City Council then voted to deny the change based on: (1) how it would be contrary to the General Plan; (2) traffic concerns relating to the industrial park; and (3) the Planning Commission's recommendation.

Opinion of the Court

Summary judgment is proper only if there is "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." URCP 56(c). The Court must view the facts in the light most favorable to the non-moving party. Higgins v. Salt Lake County, 855 P.2d 231, 233 (Utah 1993).

The Court may reverse the City Council's denial of the zone change if the "action taken was so unreasonable as to be arbitrary and capricious." Xanthos v. Board of Adjustment, 685 P.2d 1032, 1034 (Utah 1984). "Even if the reasons given in the motion adopted by the council might otherwise be legally sufficient, . . . the denial of a permit is arbitrary when the reasons are without sufficient factual basis. . . . Citizen opposition is a consideration which must be weighed, but cannot be the sole basis for the decision to deny." Davis County v. Clearfield City, 756 P.2d 704, 711 (Utah Ct. App. 1988). The Court believes that the standard set forth in Davis County, although that case involved a denial of an application for a conditional use permit instead of a zone change, involves the same legal analysis as this case.

The Court finds that the City Council's decision to deny Plaintiffs' first application was arbitrary and capricious. The City Council stated that it based its decision on: (1) how the zone change would be contrary to the General Plan; (2) traffic concerns relating to the industrial park; and (3) the Planning Commission's recommendation. The stated reasons might normally be legally sufficient. However, they are without sufficient factual basis. The traffic concern was not a sufficient reason for the denial since there was no evidence before the City Council that the proposed zone change would in fact create traffic concerns. Also, there was no factual basis to rely on the Planning Commission's recommendation. The Planning Commission initially recommended approving the application and then changed its mind after the public hearing on March 20, 1996. The only reasons the Commission gave for its sudden reversal were the comments the neighbors made at the public hearing. Accordingly, the City Council's reliance on the Commission's recommendation was factually unfounded. Similarly, neither the Planning

Commission nor the City Council provided any factual basis for the reason that the zone change would be contrary to the General Plan. The Court notes that from the zoning maps provided to the Court it appears that there are already residentially zoned areas on the west side of the I-15 buffer. The mere fact that Plaintiffs' property is on the west side does not establish that it is contrary to the General Plan.

There being no sufficient factual basis for the decision to deny Plaintiffs' application, the Court finds that the decision was based solely on citizen opposition and was therefore arbitrary and capricious. Having reversed the denial of the application for a zone change from R-1-A to R-2-75, the Court need not analyze the denial of the second application.

Order

Accordingly, Plaintiffs' Motion for Summary Judgment is granted. The zone change from R-1-A to R-2-75 is hereby approved. Defendant's Motion for Summary Judgment is denied.

DATED this 22 day of January, 1999.

BY THE COURT:

RAY M. HARDING, JUDGE

cc: Mark E. Arnold, Attorney for Plaintiffs
Diana L. Garrett, Attorney for Plaintiffs
David C. Tuckett, Attorney for Payson City
David L. Church, Attorney for Payson City